Supreme Court, U. S.
FILED
FEB 16 1980
MICHAEL RODAK, JR., CLERK

79-1129

IN THE

Supreme Court of the United States

No. A-485

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER REDEVELOPMENT COMPANY, MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER NORTH REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION,

Petitioners,

VS.

UNITED STATES OF AMERICA, Respondent, PIERRE V. HEFTLER, E. J. EHRLICH, HART PERRY, NORMAN S. ALTMAN, MH CENTER TOWER REDEVELOPMENT CORPORATION, MH CENTER NORTH TOWER REDEVELOPMENT CORPORATION, MH CENTER SOUTH TOWER REDEVELOPMENT CORPORATION, general partners of Missouri Limited Partnerships respectively named Mansion House Center Redevelopment Company, Mansion House Center North Redevelopment Company, Mansion House Center South Redevelopment Company,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES F. GUNN
GUNN and GUNN
Attorneys at Law
First Missouri Bank Building
11901 Olive Boulevard
St. Louis, Missouri 63141
314/432-4550
Attorney for all Respondents except United States of America

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

INDEX

	Page
I. Opinion Below	1
II. Jurisdiction	1
III. Question Presented	2
IV. Statement of the Case	2
V. Reasons for Denying the Writ of Certiorari	5
VI. Conclusion	7

Citations

Black v. Cutter Laboratories, 351 U.S. 292 (1956)	7
Commercial Publishing v. Beckwith, 188 U.S. 567 (1903)	7
Frank v. Nangle, #77-1165, writ of mandamus denied (8th Cir., 1977)	5
Kryger v. Wilson, 242 U.S. 171 (1916)	7
United States v. Mansion House Center, 455 F.Supp. 434 (E.D. Mo., 1978)	5
United States v. Mansion House Center, et al, 463 F.Supp. 591 (E.D.Mo., 1978)	5
United States v. Mansion House Center North Redevelopment Company, et al, 426 F.Supp. 479 (E.D. Mo., 1977)	5

United States v. Mansion House Center North Redevelopment Company, et al., 594 F.2d 653 (8th Cir., 1979) 5

United States v. Mansion House Center, et al, 605 F.2d 1090 (8th Cir., 1979)..... 5

United States v. Maurice B. Frank, 587 F.2d 924 (8th Cir., 1978) 2

Rimmel v. Frank, 594 Fd. 869 (8th Cir., 1979)..... 2

IN THE

Supreme Court of the United States

No. A-485

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER REDEVELOPMENT COMPANY, MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER NORTH REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION,

Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent, PIERRE V. HEFTLER, E. J. EHRLICH, HART PERRY, NORMAN S. ALTMAN, MH CENTER TOWER REDEVELOPMENT CORPORATION, MH CENTER NORTH TOWER REDEVELOPMENT CORPORATION, MH CENTER SOUTH TOWER REDEVELOPMENT CORPORATION, general partners of Missouri Limited Partnerships respectively named Mansion House Center Redevelopment Company, Mansion House Center North Redevelopment Company, Mansion House Center South Redevelopment Company,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. OPINION BELOW

The opinion of the Court of Appeals is reported at 605 F.2d 1090 (8th Cir. 1979) (See Pet. App. p. A-1 to A-2). The opinion of the District Court is reported at 463 F.Supp. 591 (E.D. Mo., 1978) (See Pet. App. p. A-35 to A-40).

II. JURISDICTION

The judgment of the Court of Appeals was entered on October 2, 1979. Petitioners' petition for writ of certiorari was

filed within the period of time extended by leave of Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

III. QUESTION PRESENTED

For purposes of this Brief in Opposition, Respondents[1] adopt Petitioner's statement of the Question Presented:

> "Whether the Court of Appeals erred in affirming the District Court's ruling that the 'successor' limited partnerships in question were properly formed in accordance with law and controlling partnership documents."

IV. STATEMENT OF CASE

In 1964, three Missouri limited partnerships were formed to own and operate a large residential and commercial complex in downtown St. Louis to be called Mansion House Center. In 1972, Petitioner Maurice B. Frank became an individual general partner of these partnerships.

In 1976, the United States of America, as mortgagees of the property, filed a nine count Complaint against the Petitioners and other entities owned or controlled by Maurice B. Frank. This Complaint sought (i) the recovery of funds alleged to have been wrongfully diverted from Mansion House by Frank or his related entities and (ii) the appointment of a receiver to replace Frank and operate Mansion House during the pendency of the litigation. A receiver was appointed and the United States subsequently obtained a summary judgment in the amount of $898,249.01 against Frank. This judgment was upheld by the Court of Appeals in *United States* v. *Maurice B. Frank,* 587 F.2d 924 (8th Cir. 1978). The Receiver obtained a second judgment against Frank in the amount of $623,157.38. See *Rimmel* v. *Frank,* 594 F.2d 869 (8th Cir. 1979).

---

[1]Throughout this Brief, the term "Respondents" refers to all of the Respondents listed except the United States of America.

On June 21, 1976, Maurice B. Frank gave written notice to the partners of his resignation as the sole remaining individual general partner of the three partnerships "effective July 31, 1976, pursuant to Section 6.3 of the Agreements of Limited Partnership, as amended, relating to resignation for incapacity." (Pet. App., p. A-3). Under the Partnership Agreements, the respective corporate general partners (controlled by Frank) were charged with the obligation to use their best efforts to secure, within sixty days, an individual to serve as a successor general partner, who would also acquire Maurice B. Frank's general partnership interest. They failed to obtain such new general partner.

On September 28, 1976, twenty Limited Partners owning more than 50% of each of the three 1964 Mansion House partnerships signified in writing their desire to continue the business and operations of Mansion House in successor limited partnerships. (Pet. App., p. A-4). Thereafter, as the District Court and the Court of Appeals found, successor limited partnerships were formed in accordance with the provisions of the partnership documents and in compliance with Missouri law. These successor partnerships thereby succeeded to the ownership and assumed the operation of Mansion House, subject to the rights of the Receiver. Both Maurice B. Frank and each corporate general partner controlled by him had been invited to join these successor limited partnerships, but each refused to do so.

On December 31, 1976, Maurice B. Frank caused the filing of reorganization proceedings under the Bankruptcy Act in Orlando, Florida predicated on their claimed ownership of Mansion House. In that case Petitioners demanded that the Mansion House Receiver in St. Louis surrender possession of the Mansion House South Tower. The Mansion House Receiver resisted Petitioners' assertion of ownership and on February 4, 1977, the District Court in St. Louis, after a full hearing, held that Petitioners did not own any interest in the South Tower.

On September 1, 1977, the United States filed a new count in the 1976 litigation adding Respondents as parties defendant in order to obtain a specific judicial identification of its Mortgagor[2] —the entity to whom Receiver would return possession of Mansion House upon termination of the receivership.

On October 21, 1977, Respondents filed a Motion for Summary Judgments with supporting affidavit and exhibits which sought judicial affirmation of their ownership of Mansion House. Petitioners opposed the Motion, but did not file any counter-affidavit or challenge any facts set forth in the Motion. (As noted below, this Motion was sustained on December 22, 1978, and provides the basis for this Petition for a Writ of Certiorari.)

On February 22, 1978, Petitioners filed a Motion for Partial Summary Judgments, asserting ownership of Mansion House and alleging that no material facts were in controversy. On March 15, 1978, the District Court denied this Motion.

On July 11, 1978, Maurice B. Frank caused the filing of reorganization proceedings under the Bankruptcy Act, this time in Chicago, Illinois, in which, once again, Petitioners claimed ownership of Mansion House. The Mansion House Receiver sought injunctive relief against interference with his management of Mansion House. On July 17, 1978, the District Court in St. Louis reaffirmed that Petitioners did not own any interest in Mansion House. On August 18, 1978, Petitioners filed a Notice of Appeal from this ruling, but the appeal was not perfected.

On August 17, 1978, the District Court in St. Louis again held that Petitioners did not own any interest in Mansion House and enjoined Petitioners from further interference with the Receiver and from claiming ownership of Mansion House in the Chicago

[2]The United States and Receiver were previously on record acknowledging the ownership of Mansion House by the Respondents.

proceedings. This order was appealed by Petitioners and the Court of Appeals ruled on February 28, 1979 in *United States* v. *Mansion House Center North Redevelopment Company,* 594 F.2d 653 (8th Cir., 1979) that Petitioners did not own any interest in Mansion House.

Two months earlier, on December 22, 1978, the District Court in St. Louis had granted the Respondents' Motion for Summary Judgments and declared Respondents to be the owners of Mansion House. *United States* v. *Mansion House Center, et al,* 463 F.Supp. 591 (E.D. Mo. 1978). The Court of Appeals in *United States* v. *Mansion House Center, et al,* 605 F.2d 1090 (8th Cir. 1979) upheld the District Court's order determining ownership of Mansion House by Respondents, and subject Petition to this Court for a Writ of Certiorari followed.

V. REASONS FOR DENYING THE WRIT OF CERTIORARI

The subject Petition for a Writ of Certiorari is the latest of many assertions by the Petitioners, in disregard of the succession to the ownership of Mansion House by Respondent successor partnerships, of ownership of the Mansion House project. On six separate occasions[3] in various contexts, the United States District Court in St. Louis (three times) and the Eighth Circuit Court of Appeals (three times) have consistently rejected the ownership claims of Petitioners. Both the District Court and the Court of Appeals correctly held that Petitioners' claim to ownership was without merit under the applicable part-

[3]*United States* v. *Mansion House Center North Redevelopment Company, et al,* 426 F.Supp. 479 (E.D. Mo., 1977); *Frank* v. *Nangle,* #77-1165, writ of mandamus denied (8th Cir., 1977); *United States* v. *Mansion House Center,* 455 F.Supp. 434 (E.D. Mo., 1978); *United States* v. *Mansion House Center North Redevelopment Company, et al,* 594 F.2d 653 (8th Cir., 1979); *United States* v. *Mansion House Center, et al,* 463 F.Supp. 591 (E.D. Mo., 1978); *United States* v. *Mansion House Center, et al,* 605 F.2d 1090 (8th Cir., 1979).

nership documents and controlling Missouri limited partnership law. These decisions carefully reviewed (i) the language of the partnership documents, (ii) the limited partnership law of the State of Missouri, (iii) Respondents' Motion for Summary Judgments; (iv) Respondents' supporting affidavit, (v) extensive exhibits filed by Respondents in support of said Motion and (vi) legal briefs by both sides which argued their respective interpretative positions. Petitioners did not file any counter-affidavit or challenge any facts set forth in the Motion. After reviewing the foregoing, the District Court declared that Petitioners' "argument is totally without support in view of the plain language of the agreements herein." (Pet. App., p. A-39). The Eighth Circuit Court of Appeals upheld the decision of the District Court and stated:

> "The plain language of the limited partnership agreements permitted the dissolution of the three limited partnerships and authorized the formation of the successor partnerships. The district court correctly found that those partnerships were formed in accordance with the laws of the State of Missouri." (Pet. App., p. A-2).

The Supreme Court will deny certiorari if, as is clearly the case here, the issue presented is purely a matter of state law, there is no showing that such issue is special or important and the decision of the Court of Appeals is not in clear conflict with applicable state law. (See Sup. Ct. Rule 19). In this case, only the economic interests of the litigants are affected. The issue in controversy has no special significance or importance as a legal precedent. Moreover, the decision of the Court of Appeals is clearly consistent with applicable state law. The Court of Appeals interpreted the contract documents and Missouri law and found the successor partnerships to be properly formed. In these circumstances, no basis exists for granting a writ of certiorari.

In *Black* v. *Cutter Laboratories,* 351 U.S. 292 (1956), this Court issued a writ of certiorari on the assumption that a substantial federal issue was involved. The Court subsequently dismissed the writ when it determined that the issue involved the interpretation of a local contract under local state law and there was adequate basis in state law for the decision (351 U.S. 292, at p. 299). Likewise, in *Commercial Publishing* v. *Beckwith,* 188 U.S. 567 (1903), this Court held that interpretation of contracts non-federal in nature are not subject to review. See also *Kryger* v. *Wilson,* 242 U.S. 171 (1916). Petitioners in this case do not even allege, much less show, that a federal question of any kind is involved or that this case involves anything except the interpretation of a local contract under local state law.

IV. CONCLUSION

The Petition for a Writ of Certiorari should be denied. The mere assertion by Petitioners that the court of appeals erred in deciding a purely state law issue does not provide adequate grounds for issuance of a writ.

Respectfully submitted,

JAMES F. GUNN
Gunn and Gunn
First Missouri Bank Building
11901 Olive Boulevard
St. Louis, Missouri 63141
314/432-4550

Attorney for All
Respondents Except United
States of America